IN THE HIGH COURT OF UTTARAKHAND
AT NAINITAL

Writ Petition No. 455 (S/S) of 2007

1. Sulekh Chand S/o Late Sri Jwala Ram
   R/o V.P.O. Dhanauri, District Haridwar
2. Raj Kumar S/o Sri Bhoop Singh
   R/o Village Jassawala P.O. Dhanauri, District Haridwar
3. Dhani Ram S/o Late Sri Shambhu Lal
   R/o Village Kishanpur, P.O. Bhagwanpur, District Haridwar
4. Bijendra Kumar S/o Late Sri Nathi Ram @ Nathi singh
   R/o World Bank's Colony, Village Bajuheri, P.O. Mehwar,
   District Haridwar ------ Petitioners

Versus

1. State of Uttar Pradesh through Principal Secretary, Irrigation Department, Government of U.P., Lucknow
2. Chief Engineer, (Ganga) Irrigation Department, Uttar Pardesh, Meerut
3. Executive Engineer, Sinchai Karya Mandal, Saharanpur
4. Executive Engineer, Upper Ganga Canal, Modernization Division – VI, Roorkee, Haridwar
5. Executive Engineer, Upper Ganga Canal Modernization Division – I, Roorkee Haridwar
6. Executive Engineer, Lower Division, Eastern Yamuna Canal, Muzaffarnagar
7. Executive Engineer, Link Channel, Irrigation Department, Saharanpur ------ Respondents

Hon'ble M.M. Ghildiyal, J.

Heard Sri Pankaj Miglani, learned counsel for the petitioner and Smt. Beena Pandey, learned counsel for the respondents.

By means of this writ petition, the petitioner has prayed for quashing of the orders dated 03.04.2007 and 23.04.2007 passed by the respondents.

Vide order dated 3rd April, 2007, the Senior Staff Officer of Chief Engineer, addressing the Superintending Engineer and the Executive Engineers, has directed to cancel the appointment of petitioners Raj Kumar and Sulekh Chand who were working as Peon in regular establishment and vide order dated 21st April,

2007, the said authority has directed the Executive Engineers to cancel the appointment of Sri Dhani Ram working as Work-boy and Sri Bijendra Kumar working as Peon in the regular establishment. These orders have been passed by the respondents in view of the judgment passed by the Uttarakhand High Court on 24.11.2006 in the case of Laxman Das & Ors. Vs. State of U.P. & Ors.

The petitioners earlier challenged the order dated 29.11.2005, whereby the appointment of petitioners in work charge establishment was cancelled. The High Court on 24.11.2006 dismissed the writ petition of the petitioners in view of the principle of law laid down by the Apex Court in the case of Secretary of Karnataka Vs. Uma Devi reported in 2006 (4) SCC 1. A review application was later on moved by the petitioners and the Court while disposing of the review petition, observed that order dated 24.11.2006 will have no effect, if the regularization of the daily wage workers has already been made by the respondents. The dispute in Writ Petition No. 1825 of 2005 was in respect of the cancellation of appointment of petitioners in the work charge establishment. While reviewing the order dated 24.11.2006, the Court held that aforesaid order will have no effect in case the petitioners have already been regularized.

According to the petitioners, prior to passing of order by Uttarakhand High Court in Writ Petition No. 1825 of 2005, the petitioners were duly selected after facing Selection Committee and were appointed in regular establishment. However, the respondents by the impugned order has directed to Superintending Engineer and the Executive Engineer to cancel the appointment of the petitioners in regular establishment in view of the judgment passed by Uttarakhand High Court in Writ Petition No. 1825 of 2005.

The submission of the learned counsel for the petitioner is that the judgment passed by the Uttarakhand High Court in Writ Petition No. 1825 of 2005 was reviewed later on by the Court on 23.02.2007 and the Court has observed that if the petitioners have already been regularized, their case shall not be effected by the order dated 24.11.2006.

In the case of Secretary of Karnataka Vs. Uma Devi reported in 2006 (4) SCC 1, the Apex Court has held that in case any regularization has been made prior to pronouncement of the judgment, that case shall not be reopened. According to the petitioners, they were regularized on 8th November, 2006, i.e., after the delivery of the judgment in the case of Uma Devi. The petitioners were provided appointment in regular establishment being regular work charge employee, and since the regularization of petitioners on 08.11.2006 was against the Law laid down by Apex Court in the case of Secretary of Karnataka Vs. Uma Devi, I do not find any merit in the writ petition.

The writ petition lacks merit and is dismissed.

(M.M. Ghildiyal, J.)

03.05.2007
VKS